

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

WILLIAM C. BALLARD,

Defendant-Appellant.

UNPUBLISHED

February 2, 2001

No. 219693

Wayne Circuit Court

LC No. 98-006509

Before: Collins, P.J., and Doctoroff and White, JJ.

PER CURIAM.

Defendant appeals as of right from his convictions of second-degree murder, MCL 750.317; MSA 28.549, and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2), entered after a bench trial. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant was charged in connection with the shooting death of his girlfriend's son. He asserted the defense of legal insanity. His expert witness opined that defendant suffered from paranoid schizophrenia and was legally insane at the time of the incident. The prosecution's expert witness opined that defendant was not mentally ill, and was not legally insane at the time of the incident. In finding defendant guilty, the trial court rejected defendant's assertion of the defense of legal insanity. The trial court concluded that while defendant proved by a preponderance of the evidence that he suffered from a mental illness, he failed to prove that as a result of that mental illness he lacked the substantial capacity to appreciate the nature and quality or the wrongfulness of his conduct, or to conform his conduct to the requirements of the law.

Defendant argues that he is entitled to a new trial on the basis of newly discovered evidence, i.e., the record of his hospitalization and treatment for mental illness in Mississippi. We disagree and affirm defendant's convictions.

A person is legally insane if, as a result of mental illness, he lacked the substantial capacity to appreciate the nature and quality or the wrongfulness of his conduct, or to conform his conduct to the requirements of the law. Mental illness, in and of itself, does not constitute the defense of legal insanity. A defendant has the burden of proving the defense of insanity by a preponderance of the evidence. MCL 768.21a; MSA 28.1044(1); *People v Stephan*, 241 Mich App 482, 489; 616 NW2d 188 (2000).

A motion for new trial based on newly discovered evidence may be granted upon a showing that: (1) the evidence itself, and not merely its materiality, is newly discovered; (2) the evidence is not cumulative; (3) the evidence is such as to render a different result probable on retrial; and (4) the defendant could not with reasonable diligence have produced the evidence at trial. *People v Miller (After Remand)*, 211 Mich App 30, 46-47; 535 NW2d 518 (1995).

Here, the evidence, while arguably newly discovered, is cumulative. The record of defendant's treatment in Mississippi indicated that he was diagnosed as suffering from paranoid schizophrenia; however, evidence that defendant suffered from that mental illness was put squarely before the court via defendant's expert's testimony. Furthermore, it is not likely that production of evidence detailing defendant's treatment in Mississippi would have resulted in a different verdict. The evidence did not address the issue whether defendant lacked the substantial capacity to appreciate the nature and quality or the wrongfulness of his conduct, or to conform his conduct to the requirements of the law. The trial court found that evidence regarding defendant's activities immediately after the shooting, i.e., his request that a neighbor telephone the police, indicated that he appreciated the wrongfulness of his conduct, and accepted the prosecution's expert's opinion that defendant was able to conform his conduct to the requirements of the law. The trial court, as the trier of fact, was entitled to make these findings. *People v Marji*, 180 Mich App 525, 542; 447 NW2d 835 (1989). Finally, we conclude that defendant could have produced his Mississippi treatment record at trial had he exercised reasonable diligence. Furnishing basic information, including his known nickname "Tony," his social security number, and his date of birth, almost certainly would have resulted in production of the correct record. Defendant is not entitled to a new trial. *Miller, supra*.

Defendant's assertion that he is entitled to resentencing in light of the ameliorative penalty provisions of the statutory sentencing guidelines, notwithstanding the fact that the offenses of which he was convicted occurred in 1998, is without merit. The statutory sentencing guidelines apply only to offenses committed on or after January 1, 1999. MCL 769.34(1); 28.1097(3.4)(1). The language of this statute clearly indicates that the Legislature intended that the statutory sentencing guidelines were to have prospective and not retroactive effect. *People v Reynolds*, 240 Mich App 250, 253-254; 611 NW2d 316 (2000).

Affirmed.

/s/ Jeffrey G. Collins
/s/ Martin M. Doctoroff
/s/ Helene N. White